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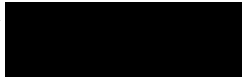


U.S. Citizenship
and Immigration
Services

H2

MAR 29 2004

FILE:



Office: DENVER, COLORADO

Date:

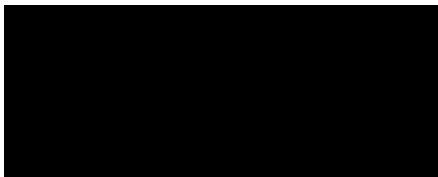
IN RE:

Applicant:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h).

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Interim District Director, Denver, Colorado, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. The applicant is the beneficiary of an approved petition for alien relative filed by her Lawful Permanent Resident (LPR) spouse. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), so that she may reside with her LPR spouse and U.S. citizen children in the United States

The Interim District Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon her qualifying family member. The application was denied accordingly. *See Interim District Director's Decision* dated April 22, 2003.

On appeal, the applicant's counsel asserts that Citizenship and Immigration Services (CIS) misapplied the extreme hardship standard set forth in section 212(h) of the Act, and that the evidence in the record establishes extreme hardship to applicant's qualifying relative.

Section 212(a)(2) of the Act states in pertinent part, that:

(A)(i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-

(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

. . . .

Section 212(h) of the Act provides, in pertinent part, that:

(h) The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if -

. . . .

(1) (B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien

The record reflects that the applicant has the following convictions:

June 21, 1999: District Court, Douglas County, State of Colorado, convicted of Colorado Statute 18-4-401, theft \$300-\$10,000. Sentenced to a deferred sentence for a period of two years, fined and ordered to perform 50 hours of community service.

June 21 1999: District Court, Douglas County, State of Colorado, convicted of Colorado Statute 18-4-401(2)(b), theft \$50-\$300. Sentenced to a one-year probation concurrent with the sentence of Colorado Statute 18-4-401.

The applicant is inadmissible to the United States due to her conviction of a crime involving moral turpitude (theft).

Section 212(h) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(2)(A)(i)(I) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

In the present case, the applicant must demonstrate extreme hardship to her LPR spouse or U.S. citizen children.

On appeal, counsel submits affidavits from family members, letters from teachers where the applicant's children attend school, a letter from the church that the applicant attends and letters from the applicant's spouse's employer. The affidavits state general hardship that would be imposed on the applicant's family if she were not allowed to remain in the United States. In the affidavit from the applicant's brother-in-law it is stated that her spouse and children may be forced to leave the United States and relocate to Mexico if the applicant's waiver application was denied. The letter from the principal of the school the applicant's children attend states that the children would be greatly impacted if the applicant had to return to Mexico. The rest of the letters talk about the applicant's good moral character.

There are no laws that require the applicant's spouse and children to leave the United States and live abroad. In *Silverman v. Rogers*, 437 F. 2d 102 (1st Cir. 1970), the court stated that, "even assuming that the Federal Government had no right either to prevent a marriage or destroy it, we believe that here it has done nothing more than to say that the residence of one of the marriage partners may not be in the United States." The uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represent the type of inconvenience and hardship experienced by the families of most aliens being deported. *See Shoostary v. INS*, 39 F. 3d 1049 (9th Cir. 1994).

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS*, *supra*, held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. The U.S. Supreme Court additionally held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

A review of the documentation in the record, when considered in its totality reflects that the applicant has failed to show that her LPR spouse and U.S. citizen children would suffer extreme hardship if she were removed from the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.